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In re Application of  
VAN DER KLIS, Jan, Dirk et al  
Application No.: 10/018,390  
PCT No.: PCT/NL00/00199  
Int. Filing Date: 24 March 2000  
Priority Date: 24 March 1999  
Attorney's Docket No.: P48660PC00  
For: INCREASING PLASMA CALCITRIOL  
LEVELS

DECISION ON  
PETITION UNDER  
37 CFR 1.137(b)

This is in response to the "Petition For Revival of an International Application for Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)."

### **BACKGROUND**

On 24 March 2000, this international application was filed, claiming an earliest priority date of 24 March 1999.

On 24 October 2000, a Demand electing the United States was filed in this international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 24 September 2001. This international application became abandoned with respect to the United States at midnight on 24 September 2001 for failure to pay the basic national fee.

On 11 December 2001, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition, and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee. No executed declaration or oath was submitted at such time.

On 01 April 2002, the United States Designated/Elected Office erroneously mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b) must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond.

### **DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3) and, (4) under 37 CFR 1.137(b).

### **DECISION**

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371, and to vacate the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905).



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